

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JASON A. REDON,

Plaintiff,

vs.
SAN DIEGO COUNTY, CITY OF
SAN DIEGO, ANDRES RUIZ,
BRANDON JORDAN, DEREK
MILLER, SGT BULKOWSKI, SGT D
GRUBBS, OFFICER GIBSON,
OFFICER POTTIN, OFFICER
NATAL, OFFICER JOHN DOES 1-X,
WILLIAM LANSDOWNE, JAN
GOLDSMITH, MICHAEL LEE
FICKEN, MIRIAM MILSTEIN,
DIANA DOHERTY, JOHN DOES 2-
X,

Defendants.

CASE NO. 13cv1765 WQH (KSC)

ORDER

HAYES, Judge:

The matters before the Court are (1) the motion opposing notice of removal of civil action filed by Plaintiff Jason Redon (ECF No. 4) and (2) the motion to dismiss and motion for a more definite statement filed by Defendant Jan Goldsmith (ECF No. 2).

BACKGROUND

Plaintiff Redon (“Plaintiff”) commenced this action in the San Diego Superior Court alleging state and federal constitutional violations. (ECF No. 1-2 at 1). On August 27, 2012, Plaintiff filed an amended complaint to recover money damages and

1 injunctive relief (“first amended complaint”) in the San Diego Superior Court. (ECF
2 No. 1-2 at 2). On January 8, 2013, Plaintiff served the amended complaint and
3 summons on Defendant San Diego Police Department. (ECF No. 1-2 at 12).

4 On July 5, 2013, Plaintiff served an amended complaint for violation of civil
5 rights and other wrongs (“second amended complaint”) on Defendant City Attorney of
6 San Diego. (ECF No. 1-3).¹

7 Plaintiff's second amended complaint alleges that "[o]n May 3rd, 2011 and
8 August 19, 2011, the plaintiff was subjected to unnecessary and excessive force by
9 various defendant police officers, including unwarranted, indiscriminate and excessive
10 application of pain compliance holds, carotid restraints and Tasers." *Id.* at 1. The
11 second amended complaint alleges that "Plaintiff was injured from improper use of
12 force, including but not limited to the use of taser causing chest pain, carotid restraint
13 causing neck plain and pain compliance techniques resulting in permanent ligament
14 damage to finger." *Id.* The second amended complaint alleges that Defendants "acted
15 pursuant to an official unconstitutional policy of the County of San Diego." *Id.* at 2.
16 The second amended complaint sets forth the following causes of action against all
17 Defendants: (1) violation of First and Fourteenth Amendments to the United States
18 Constitution under 42 U.S.C. § 1983; (2) violation of Fourth and Fourteenth
19 Amendments to the United States Constitution under 42 U.S.C. § 1983; (3(a))² violation
20 of Fourteenth Amendment to the United States Constitution under 42 U.S.C. § 1983;
21 (3(b)) violation of Eighth Amendment to the United States Constitution under 42 U.S.C.
22 § 1983; (4) denial of California constitutional rights; (5) assault and battery; (6) false
23 arrest and false imprisonment; (7) Cal. Civil Code Section 51.7; (8) Cal. Civil Code
24 Section 52.1; (9) Cal. Civil Code Section 49; (10) Cal. Civil Code 50; (11) intentional

¹ The second amended complaint appears to have been filed in state court on June 27, 2013.

²⁷ 2 The second amended complaint lists two causes of action labeled “three.” The
28 Court has listed the two separate causes of action as 3(a) and 3(b) to avoid confusion.

1 infliction of emotional distress; (12) negligence; (13) defamation/slander; (14) abuse
 2 of process; and (15) conspiracy. *Id.* at 5–8.

3 On July 29, 2013, Defendant Jan Goldsmith, City Attorney of San Diego,
 4 (“Defendant Goldsmith”) filed notice of removal of civil action in this Court. (ECF No.
 5 1). On August 8, 2013, Defendant Goldsmith filed motion to dismiss and motion for
 6 more definite statement. (ECF No. 2). On August 14, 2013, Plaintiff filed motion
 7 opposing notice of removal of civil action. (ECF No. 4). On August 28, 2013, Plaintiff
 8 filed response opposing motion to dismiss. (ECF No. 6).

9 Plaintiff’s Motion Opposing Notice of Removal

10 Plaintiff contends that removal of the action is time-barred. Plaintiff asserts that
 11 the notice of removal filed on July 29, 2013 is untimely, on the grounds that the 30-day
 12 window from the filing of the first amended complaint passed over ten months before
 13 the notice of removal was filed. Plaintiff further asserts that his claims under the Unruh
 14 Civil Rights Act are non-removable.

15 Defendant Goldsmith contends that removal of the case was proper under 28
 16 U.S.C. § 1441(a). Defendant Goldsmith asserts that he was served with the second
 17 amended complaint on July 9, 2013. Defendant Goldsmith contends that the notice of
 18 removal was filed within thirty days of receipt of the second amended complaint and
 19 is timely.

20 A defendant seeking to remove a case from state court to federal court must file
 21 a notice of removal within thirty days of receiving “a copy of the initial pleading . . . or
 22 within 30 days after the service of summons upon the defendant if such initial pleading
 23 has then been filed in court and is not required to be served on the defendant, whichever
 24 period is shorter.” 28 U.S.C. § 1446(b)(1). The removal statute also provides: “If
 25 defendants are served at different times, and a later-served defendant files a notice of
 26 removal, any earlier-served defendant may consent to the removal even though that

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1 earlier-served defendant did not previously initiate or consent to removal.” 28 U.S.C.
 2 § 1446(b)(2)(c). The Court of Appeals for the Ninth Circuit has adopted the “later-
 3 served defendant rule,” which provides that “each defendant is entitled to thirty days
 4 to exercise his removal rights after being served.” *Destfino v. Reiswig*, 630 F.3d 952,
 5 956 (9th Cir. 2011).

6 In this case, Defendant Goldsmith became a defendant in the case when Plaintiff
 7 served a copy of the second amended complaint on the City Attorney of San Diego on
 8 July 5, 2013. *See* ECF No. 1-3 at 10. Under the “later-served defendant rule,”
 9 Defendant Goldsmith was afforded thirty days from July 5, 2013 to file a notice of
 10 removal, which renders the notice of removal Defendant Goldsmith filed on July 29,
 11 2013 timely.

12 Supplemental jurisdiction is proper over Unruh Civil Rights Act claims when
 13 these claims are filed in conjunction with federal causes of action. *See Bass v. County*
 14 *of Butte*, 458 F.3d 978, 979 (9th Cir. 2006) (implicitly approving district’s court’s
 15 exercise of supplemental jurisdiction over plaintiff’s Unruh Civil Rights Act claim);
 16 *Goldman v. Standard Ins. Co.*, 341 F.3d 1023, 1025 (9th Cir. 2003) (same); *Martin v.*
 17 *Int’l Olympic Comm.*, 740 F.2d 670, 673 (9th Cir. 1984) (same); *Id.* (Pregerson, J.,
 18 dissenting) (“The action was originally filed in the California state courts but was
 19 removed to the federal district court under federal question jurisdiction. . . . We have
 20 pendent jurisdiction over the Unruh Act claim.”). The Court finds that Plaintiff’s
 21 claims were properly removed. Plaintiff’s motion opposing notice of removal is denied.
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23 **Motion to Dismiss**

24 Defendant Goldsmith contends that Plaintiff’s complaint fails to state a ground
 25 upon which relief may be granted because the allegations are too vague and conclusory.
 26 Defendant Goldsmith asserts that Plaintiff has not identified the role of each Defendant
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1 in the alleged violation of Plaintiff's rights and that Plaintiff has not pled facts adequate
 2 to establish the required elements of any of the causes of action.

3 Plaintiff contends that the second amended complaint states a sufficient factual
 4 basis to establish plausibility for each cause of action.

5 Under Federal Rule of Civil Procedure 12(b)(6), a pleading may be dismissed if
 6 it fails "to state a claim upon which relief can be granted." A district court may dismiss
 7 a claim if the complaint (1) fails to state a "cognizable legal theory" or (2) lacks
 8 "sufficient facts alleged to support a cognizable legal theory." *Navarro v. Block*, 250
 9 F.3d 729, 732 (9th Cir. 2001). "To survive a motion to dismiss, a plaintiff's complaint
 10 must have sufficient facts to state a facially plausible claim to relief." *Conservation*
 11 *Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (internal quotation marks and
 12 citation omitted). "A claim has facial plausibility when the plaintiff pleads factual
 13 content that allows the court to draw the reasonable inference that the defendant is liable
 14 for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "When
 15 reviewing a dismissal for failure to state a claim pursuant to Rule 12(b)(6) all
 16 allegations of material fact are taken as true and construed in the light most favorable
 17 to the non-moving party." *AlliedSignal, Inc. v. City of Phoenix*, 182 F.3d 692, 695 (9th
 18 Cir. 1999). "The standard used to evaluate a motion to dismiss is a liberal one,
 19 particularly when the action has been filed pro se." *Ivey v. Board of Regents*, 673 F.2d
 20 266, 268 (9th Cir. 1982). "However, a liberal interpretation of a civil rights complaint
 21 may not supply essential elements of the claim that were not initially pled. Vague and
 22 conclusory allegations of official participation in civil rights violations are not sufficient
 23 to withstand a motion to dismiss." *Id.* (finding complaint was properly dismissed
 24 where plaintiff's allegations "were not supported by reference to any specific actions,
 25 practices or policies" of the defendants).

26 In this case, Plaintiff has alleged sixteen causes of action against all named
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1 Defendants. In order for Plaintiff to establish a Section 1983 violation, Plaintiff must
2 show that a defendant acted under color of law and that a defendant's conduct deprived
3 Plaintiff of particular rights under the United States Constitution. *Williams v. Gorton*,
4 529 F.2d 668, 670–71 (9th Cir. 1976). However, the complaint alleges that Defendants
5 acted pursuant to “an official unconstitutional policy of the County of San Diego,”
6 rather than referencing any specific practice or policy. (ECF No. 1-3 at 2). The
7 complaint does not identify conduct by any specific Defendant which deprived Plaintiff
8 of any particular rights under the United States Constitution. Plaintiff’s “[v]ague and
9 conclusory allegations of official participation in civil rights violations are insufficient
10 to withstand a motion to dismiss.” *Ivey*, 673 F.2d at 268. Plaintiff’s allegations are “not
11 supported by reference to any specific . . . practices or policies.” *Id.* The Court finds
12 that Plaintiff has not pled facts adequate to establish the required elements of Plaintiff’s
13 claims. Plaintiff’s claims are dismissed for failure to state a claim upon which relief can
14 be granted.

15 Defendant Goldsmith contends that Plaintiff’s state law claims seeking monetary
16 relief are time-barred on the grounds that Plaintiff failed to follow the claims
17 presentation requirement under the California Tort Claims Act (“the Act”). The
18 complaint does not allege that Plaintiff has filed a claim with the City of San Diego in
19 compliance with the claims presentation requirement of the Act. Plaintiff has requested
20 an opportunity to amend his complaint. The Court grants Plaintiff an opportunity to
21 amend his complaint.

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CONCLUSION

IT IS HEREBY ORDERED that the motion opposing notice of removal of civil action filed by Plaintiff (ECF No. 4) is DENIED. Defendant's motion to dismiss (ECF No. 2) is GRANTED. Plaintiff's claims are DISMISSED WITH LEAVE TO AMEND within 45 days. If no amended complaint is filed, the Clerk of the Court shall close this case.

DATED: November 8, 2013

William Q. Hayes
WILLIAM Q. HAYES
United States District Judge